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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1899 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

JJJ

2. To be referred to the Reporter or not? No.

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

AHMEDABAD NEW TEXTILE MILLS

Versus

RAJUBHAI DALCHANDBHAI

Appearance:

NANAVATI & NANAVATI for Petitioner

MR PJ MEHTA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 01/07/98

ORAL JUDGEMENT

Rule. Mr. Mehta waives service of Notice of Rule.

2. Present writ petition is filed by the employer to challenge the order passed by the Industrial Court, Ahmedabad in Revision Application No. 13 of 1997 on 26.9.1997.

3. The respondent has filed T.Application No. 292 of 1992 before the Labour Court, Ahmedabad and in support of his claim he has produced some documents. One of the documents produced by him is the gate pass, copy of which is produced at Annexure.F on page 37 of this petition. When the witness for the present petitioner was in the witness box, the respondent wanted to ask the witness to identify the signature on the said document. Admittedly, said document is a xerox copy and the original is not produced by the petitioner. It is also submitted before me that during his testimony, the respondent has not also made out any case about the loss of original as well as how the petitioner came in possession of the copy of the document. When the respondent wanted to show the document and ask the witness to identify the signature on the same, objection was raised on behalf of the present petitioner contending that the document, in question, is not the original one and the xerox copy of the document is in the nature of secondary evidence. The petitioner contended that in view of section 63 of the Evidence Act, the respondent could not show the said document. Said contention was upheld by the Labour Court. Hence the respondent had gone in revision before the Industrial Court, Ahmedabad. The Revisional Court allowed said revision and directed that the respondent would be at liberty to show the said document to the witness during the cross examination of the witness and permit the respondent herein to put questions on the said document.

4. Present writ petition is filed to challenge the said order. Admittedly the document in question was already produced on record. Mere production of document does not mean, admission of the document in evidence. In order to admit the document in evidence, the document must be proved as per the provisions of Evidence Act or it must be admitted by the other side in evidence. Therefore, mere production of the document will not make the admission of the document in evidence. Similarly, merely proving the signature on the document, will not also amount to proving of the whole of the document. It will be open for the court to put a query to the respondent at the time when the respondent wants to refer to the said document and to show the same to the witness as regards the whereabouts of the original document as

well as how the document came in possession of the respondent. It is settled law that in order to admit a document which is in the nature of secondary evidence, the party producing the said document must make out a case for admission of the secondary evidence. In order to admit a document in evidence, it is also necessary for the court to consider the question as to whether the document is coming from proper custody or not. Therefore, at this stage merely showing of the said document during cross examination of a witness for the present petitioner could not be said to be improper or illegal. The revisional court was quite justified in permitting the respondent to show that document during cross examination. Merely showing of the document during cross examination would not amount to admission of the document in evidence. If the document is shown to the witness and if the witness admits the signature thereon, it would be open for the petitioner to raise an objection at that time before the court, that the document in question being a copy, the petitioner is objecting for exhibiting of the said document and the objection raised by the petitioner should be considered and decided by the Labour Court at the time of final hearing. In the circumstances I hold that it is not necessary to interfere with the order or the revisional court by exercising discretionary powers under articles 226 and 227 of the Constitution of India. The petition therefore, deserves to be dismissed and it is accordingly dismissed. The costs awarded at the time of admission of the petition are already withdrawn by the respondent and therefore, no separate order is passed regarding withdrawal of the amount deposited in the court. Rule discharged. No order as to costs of this petition.

(S.D.Pandit.J)